

## CHAPTER 8 - CLAIMS AGAINST CONTRACTORS

### **CLAIMS AGAINST CONTRACTORS**

1. Action required of the SCO when money is received from a bidder indebted to the Government. (See Chapter 6, paragraph A2c.)

a. Research local indebtedness listing and/or contact DRMS-TRR by telephone to determine if the debt still exists and the amount of the indebtedness.

b. Notify the cashier so that money may be deposited to the appropriate account no later than the close of the following business day after receipt and forward a copy to DRMS-TRR via facsimile. If the bidder has submitted an uncertified personal or company check, allow sufficient time (normally 15 days) for the check to have been returned by the bank upon which it was drawn.

c. Notify the debtor by letter:

- Allow the individual 30 calendar days in which to respond to the charges of indebtedness.
- If the individual is an unsuccessful bidder, explain that the bid deposit is being withheld for possible set-off action.
- If the individual is a successful bidder, explain that the bid deposit is being deposited to offset the debt. Any excess portion of the bid deposit may be applied to awards on those items that will be in the best interest of the Government.
- If a refund is due the bidder, explain that the refund is being withheld for offset action.
- If, after receipt of the individual's response, it is determined that funds were held in error, notify the individual in writing. A refund will be forwarded under separate cover if individual was an unsuccessful bidder. The payment will be applied toward the bid or contract being held in abeyance, if the individual is a successful bidder.

d. If the debtor has submitted/referenced a letter of credit or an approved bid deposit bond in support of a personal and/or company check to satisfy the bid deposit requirement, a copy of all correspondence to the bidder to cure the debt should be sent to the surety.

e. If the debt is legitimate or unchallenged, process the debt according to paragraph A3 below.

2. No Awards. Do not make any awards if notice has been transmitted to the SCO from DRMO Central that the bidder is indebted to the Government as a result of prior purchases of surplus property. Process all debts as set forth in this volume. In unusual cases, the interests of the Government may dictate that award should be made to an indebted bidder and a determination to do so may be made on an individual case-by-case basis by assigned counsel. The DRMS Commander will make such decisions and document the reasons and provide a copy of his determination for the contract file.

3. Action required of the SCO on Contract Debts

a. If the balance due is not paid within 30 calendar days from the date the statement of account is mailed, prepare DRMS Form 826. Such should be accomplished within 2 workdays following the suspense date established (i.e., default cure, as stated in Block 6 of DRMS Form 433).

b. Simultaneously, where a purchaser cites an approved bid deposit bond or letter of credit in support of his bid, the SCO will make written demand for payment to the surety for that bid bond or letter of credit. The demand will be for the total amount due (up to a maximum of 20 percent of the original total contract price if

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security was a bid deposit bond). If the surety pays the entire debt amount, forward a copy of the DD Form 1131 to DRMS-TRR. If a debt remains after surety's payment of the amount to which they are obligated, process the remaining debt as indicated below. If the surety refuses demand for payment, include the SCO's written demand and surety's written refusal in the file and process the debt as indicted below.

c. Transfer all debts not paid within the notice period. Systematically or manually prepare the DRMS Form 826, Debt Transfer Report and forward it to DRMS-TRR, 74 N Washington Avenue, Battle Creek MI 49017-3092, for further collection action.

- Accomplish transfers on DRMS Form 826 with all the supporting documents that make up debt amount (on Term Sales include all DRMS Form 915 as supporting documents). The remarks section of DRMS Form 826 should contain such current credit data as is readily available to the DRMO. This section should also contain a recommendation (affirmative or negative) to compromise, discontinue or terminate the claim along with the basis for this recommendation. Include any other information that may assist DRMS in determining the validity of the claim or in collecting the debt. Claims determined by DRMS-TRR to be invalid will be returned to the Sales Contracting Officer.

***NOTE: The sales contract and item number, tax identification number (or social security number), name, address and telephone number of the debtor must be included in supporting documentation.***

- List these debts by the respective DRMO Name. This list should contain substantially the same information as displayed on the BMFE. The cashier will use this data for possible offset in future transactions.
- Telephonically refer protests or objections by the debtor to assigned counsel for resolution.

### 4. Special Situations

a. Notwithstanding the procedures outlined above, should it appear to the contracting officer that a debt was incurred in such a manner as to indicate possible fraud, report the debt immediately to assigned counsel by telephone for guidance.

b. If at any stage during the processing of a debt the contractor disputes the amount due or otherwise contests the debt, assigned counsel guidance will be obtained prior to making further demands for payment.

c. If at any time after documentation of a debt, the debtor requests permission to make payments through a deferred payment plan, obtain guidance from DRMS-TRR.

d. Should a bidder whose name appears on the BMFE as a debtor be the high bidder for any item, the SCO will contact DRMS-TRR for guidance as to whether award can be made.

e. Anyone attempting to register at a local or national sale whose name appears as a debtor on the BMFE or local indebtedness list will not be registered but will be reported promptly to DRMS-TRR to determine the current status of the indebtedness. DRMS-TRR will refer to DRMS-G for guidance when necessary. Should the bidder pay the debts in total (principal and interest) allow the individual to register to bid.

5. Procedures for Withholding and Offset of Funds. DRMOs will withhold funds up to the appropriate total amount of the debt (i.e., interest plus principal). Deduct all of the interest computed to the date of the offset or up to the total amount of the offset available first, and apply any remaining funds to the principal.

***NOTE: The application of interest is explained in Chapter 9, paragraph A and contains examples of processing debt offsets. Based on information contained in the BMFE, DRMOs will withhold any available funds for possible offset against debtors listed on the indebtedness portion of the list. DRMOs will make preliminary calculations of the offset based on the listing and contact DRMS-TRR by telephone to coordinate the offset. This is necessary to ensure that the principal amount(s) and interest date(s) listed are still current. Number the offsetting financial document in the voucher number series and file in the financial folder of the IFB that generated the money for the offset action. Furnish a vouchered copy of the offsetting document containing the name of the debtor to DRMS-TRR.***

6. Voluntary Debt Payments. When a bidder voluntarily submits a payment of a previous debt where the financial folder has been closed out and/or the debt has been forwarded to DFAS-CO, or it is for a debt listed on the BMFE, contact DRMS-TRR by telephone to coordinate the collection. Prepare a numbered voucher and file in a Collection Voucher - Voluntary Debt Payments Folder. Furnish DRMS-TRR a vouchered copy of the collection voucher.

7. Administrative Offset of Debts. An administrative offset is withholding money of a person or company to satisfy a debt owed the Government by that person or company. Administrative offset applies to cases wherein money submitted to DRMS by a bidder is subsequently applied against the indebtedness to satisfy the bidder's debt. This procedure applies to affiliated (cross-referenced) persons or companies listed in the BMFE or local indebtedness listing and to the withholding of a bidder's funds (i.e., bid deposit). Voluntary debt payments by the indebted party are not considered administrative offsets. Treat as normal debt collections (see paragraph A7 above).

a. Whenever it has been determined that a possible affiliation may exist between a bidder and an indebted entity, the SCO will take the following action:

- Telephonically advise assigned counsel of the suspected affiliation.
- Deposit bid-deposit money received according to paragraph B2b, this chapter, regardless of whether guaranteed or non-guaranteed instruments.
- If the allegedly affiliated bidder is not high on any items, proceed with the award process to the high bidder(s). However, if said bidder is in line for an award, defer such action pending establishment of non-affiliation. Ensure that the bid acceptance periods of any affected bidders will not expire; request extensions as necessary but only from bidders who have allowed the full 60-day period for the consideration of their bids.
- If funds deposited were in guaranteed instrument, immediately issue a letter (see Supplement 4 for a sample letter) to the allegedly affiliated bidder. If monies were not in guaranteed instrument, wait for the check to clear your banking institution prior to issuing said letter. In those instances when the check does not clear, proceed with established bad check reporting procedures.
- Telephonically advise assigned counsel of response, or lack thereof, to the SCO's request for proof of non-affiliation and issue the offset letter (see Supplement 4 for a sample letter) when appropriate.

b. When withholding a bidder's funds (i.e., bid deposit or refund) to satisfy or apply directly against a bidder's debt, the SCO should:

- Deposit these funds regardless of whether a guaranteed or non-guaranteed instrument. The procedure as described in paragraph 8a above should be followed with the appropriate letter issued (see Supplement 4 for a sample letter).
- Whenever an offset is to be made directly against the bidder's funds in the Government's possession, telephonically advise assigned counsel of the response, or lack thereof, to the SCO's request to show cause why an offset should not be made.